

Mr. Abe Williams

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Dear Mr. Williams:

U.S. Environmental Protection Agency (EPA) Deputy Administrator Perciasepe asked me to respond to your letter of February 28, regarding the Bristol Bay Watershed Assessment. I know that Mr. Perciasepe appreciated the opportunity to meet with you and Ms. Riemers on February 8. We remain interested in hearing from you and others as we complete our watershed assessment. You raised several questions and concerns which I am responding to in this letter.

As you know, since 2010 nine Bristol Bay Tribes, the Bristol Bay Native Corporation, and other tribal organizations, and many groups and individuals have requested that EPA use its statutory authority under the Clean Water Act (CWA) Section 404(c) authority to stop the proposed Pebble Mine. The original request from the nine tribes was well substantiated with pertinent information and EPA took this request seriously. Subsequently, two tribes, other tribal organizations including your organization, the Governor of Alaska, and other groups and individuals, including the Pebble Limited Partnership, requested that EPA let the standard National Environmental Policy Act/CWA Section 404 review process proceed. In order to give due consideration to these conflicting requests, EPA decided to collect and evaluate the available scientific information on Bristol Bay fisheries and their vulnerability to large scale mining development. This watershed assessment will enable us to make judicious responses to these requests based on the available science.

Your letter requested that we provide “*the EPA regulations that you are using to define the public process that we are enmeshed in now for the 404(c) request and the watershed study.*” As we have noted on numerous occasions, EPA has not initiated a 404(c) action in the Bristol Bay. Also as we have discussed before, EPA’s Bristol Bay Watershed Assessment is not a regulatory action. As such, there are no public process requirements defined in regulation. The watershed assessment is being done by EPA to better understand current information about the Nushagak and Kvichak watersheds and evaluate potential risks from large-scale mining in these watersheds.

Even though there are no requirements for public participation, EPA has committed to conduct our assessment in an open, transparent and collaborative process incorporating numerous opportunities for federal, state, tribal and public input. We have requested information regarding the Bristol Bay watershed (specifically the Nushagak and Kvichak watersheds) from the public, posted documents about the watershed assessment on our website, met with members of Tribal governments and local communities, and convened an Intergovernmental Technical Team early in the process to include input from federal and state agencies, as well as Tribal government representatives. We will also release the watershed assessment for public review, as well as submit it for scientific peer review. We have requested nominations of independent qualified scientists from the public to be considered for the peer review panel; we will be soliciting public input on the charge to the peer review panel; we will be conducting a series of public outreach meetings on the draft assessment during the public comment period in May/June 2012 in Anchorage as well as additional locations in the Bristol Bay region; and we will have opportunities for public comment during the peer review meeting currently scheduled for August 2012 in Anchorage. These actions go well beyond our usual process for development of a scientific assessment for EPA use, but we feel the level of interest in this issue warrants the extra effort.

You suggested that we have only listened to proponents of a 404(c) action. That is clearly not the case. There are many individuals and groups that have a strong interest in the Bristol Bay Watershed Assessment. We have met with and listened to concerns of representatives from Tribal governments, Alaska Native Corporations, environmental groups, and industry. You requested that we provide your non-profit organization more deference than other entities interested in the watershed assessment. We remain committed to hearing diverse perspectives and conducting an inclusive process, as well as fulfilling our responsibilities to engage Tribal governments in government-to-government consultation, and will not give deference to a specific organization.

Your letter also includes a request for information and communications related to the various 404(c) requests submitted to EPA. Specifically, you requested copies all such requests as well as all communications between EPA personnel (and consultants) related to the 404(c) requests including communications sent before and after submissions of 404(c) related requests. This information is quite voluminous. For example, requests from those who have asked that EPA take action under 404(c) currently number in the thousands. Providing you with copies of all of this material is beyond the scope of this response. Requests for material of this volume and scope are typically handled via a request made pursuant to the Freedom of Information Act (FOIA). For more information regarding how to submit a FOIA request see: <http://yosemite.epa.gov/r10/extaff.nsf/webpage/freedom+of+information+act?OpenDocument> If you have additional questions, you can also contact the Region 10 FOIA Officer at r10.foia@epa.gov or 206-553-8665.

You expressed concerns that our watershed assessment is not a field study which is generating new information. We have been clear since the beginning of the assessment effort that

we are not collecting additional information in the field, with the exception of interviews with Tribal elders and culture bearers. The watershed assessment will compile and examine existing information regarding the Nushagak and Kvichak watersheds and evaluate how potential future large-scale mining may affect the salmon fishery. As you have suggested, we will be assuming that any mining in the region will use up-to-date mining practices. Consistent with your request, we are looking at other mines in the Fraser River watershed and elsewhere to learn from other operating mines.

Your letter also raised questions regarding why EPA framed its assessment around the Bristol Bay's fishery resources. As you know, the focus of the assessment is to evaluate the potential impacts on the salmon fishery as well as any associated impacts on wildlife and human health and welfare if the salmon fishery is impacted. EPA framed its assessment this way because requests to EPA to take action in the watershed focused largely on concerns that the watershed's subsistence, commercial and sport fishery (particularly its salmon fishery) could be adversely impacted by future large-scale mining. The importance of the Bristol Bay's subsistence, commercial and sport fishery is well known. Similarly, information regarding potential large-scale mining in the subject watersheds is also well publicized. EPA's assessment will help EPA determine what action, if any, is appropriate to take at this time based on the extent of available information.

You expressed concern that EPA is using our discretion on what information is used in the watershed assessment. It is our responsibility to make sure that information used in the assessment is scientifically sound and well-referenced so that we produce a high quality watershed assessment and therefore we are using some discretion about the information and data in our assessment. However, we continue to welcome scientific information about the watershed from any and all sources and will continue to consider new information as it becomes available. In addition, we will be providing our draft report for both public and scientific peer review, which we hope will result in recommendations for improvement.

Regarding our schedule, we remain committed to releasing our draft assessment report this spring and holding public meetings prior to the fishing season. Our peer review meeting will be scheduled in August. This schedule has been publicly available since last summer so members of the public and interested organizations could plan for their review of the document.

We value your perspective and input and look forward to your continued participation in the assessment effort. If you have any specific questions about the assessment, please contact Mr. Rick Parkin, who is the EPA's lead coordinator for the watershed assessment at (206)553-8574. Thank you again for taking the time to meet with us and share your concerns.

Sincerely,

Dennis...